



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Endorsed by the Superior Judges of the City and County of San Francisco, and  
Charles T. Boone the well-known Law Book writer, and Lawyers  
of the San Francisco Bar:

We have examined a little work on the Mechanics' Lien Law  
Law Book House, of this city, and are pleased to say that we  
recommened it to be of very great assistance to Mechanics, and to  
the public in general.

CHARLES W. SLACK, Superior Judge.

WALTER H. LEVY,

J. V. COFFEY,

J. C. B. HEBBARD,

A. A. BAKER,

JAMES S. BAKER,

EDWARD A. BAKER,

J. M. SPANGLER,

and examination of your compilation of the Mechanics' Lien Law, and  
finding it to be a correct presentation of that law as embodied in the  
statutes of this State, we are pleased to say that we  
recommened it to be of very great assistance to Mechanics, and to  
the public in general.

CHARLES T. BOONE

### Endorsements from the Following Lawyers:

JOSEPH A. BAKER

LESLIE J. & HORTON

SHEDDEN & KELLOGG

JOHN H. JACKSON

COLEMAN & BARTON

IDEAL PUBLISHING & A

W. S. WOOD, Esq.

And Others.

EXPRESSLY COMPILED EXPRESSLY FOR

**D \* LAW \* BOOK \* HOUSE,**  
**PUBLISHERS.**

DL  
ARI  
HYm

March 2. Thompson

Copyright 1900

STANFORD LAW LIBRARY

Endorsed by the Superior Judges of the City and County of San Francisco, and  
Charles T. Boone the well-known Law Book writer, and Lawyers  
of the San Francisco Bar:

CHARLES W. SEAMAN, Superior Judge.

WALTER H. LEVY,

J. V. GORLEY,

J. C. B. HARRARD,

A. A. S. J.

JAMES A. TAYLOR

EDWARD A. L. J.

J. M. SEAWELL,

Endorsements from the Following Lawyers:

CHARLES T. BOONE, Author of

And Others.

CAREFULLY COMPILED EXPRESSLY FOR

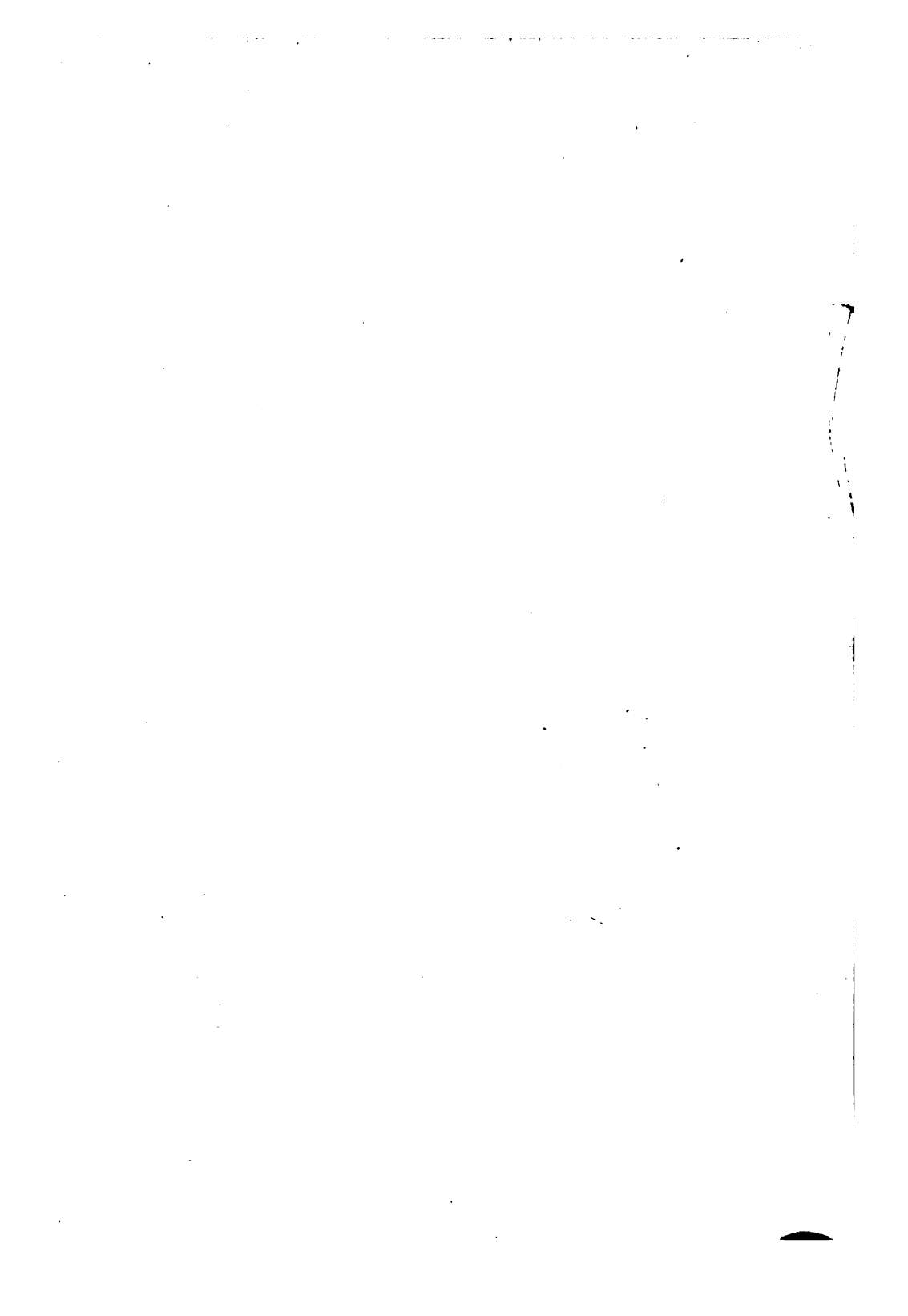
REUBEN'S \* OLD \* LAW \* BOOK \* HOUSE,  
PUBLISHERS,

DL  
ARI  
HY.m

Stanford University

STANFORD LAW LIBRARY

Advised by the Superior Tribunal of the City and County of San Francisco



Endorsed by the Superior Judges of the City and County of San Francisco, and  
Charles T. Boone the well-known Law Book writer, and Lawyers  
of the San Francisco Bar:

CHARLES W. SLACK, Superior Judge.  
" " "  
WALTER H. LEVY, " "  
J. V. CORLEY, " "  
J. C. B. LEBEARD, " "

A. A. SAWWELL, " " "  
JAMES M. TROTT, " " "  
EDWARD A. TROTT, " " "  
J. M. SEAWELL, " " "

**CHARLES L. BOONE**, Author of *The  
Adventures of Captain Boone*

### Endorsements from the Following Lawyers:

[illegible]

**CAREFULLY COMPILED EXPRESSLY FOR**

**REIDEN'S • OLD • LAW • BOOK • HOUSE, • PUBLISHERS.**



DL  
ARI  
HY.m

State of Louisiana

OFFICE OF THE ATTORNEY GENERAL

STANFORD LAW LIBRARY

Endorsed by the Succession Indenture of the City and County of San Francisco

7

7

7

7

7

7

7

7



Reuben, Moses

# **MECHANICS' LIEN LAW**

OF

## **CALIFORNIA.**

**ANNOTATED.**

WITH FORMS, NOTES AND REFERENCES

**1894.**

"A Mechanics' Lien exists merely by virtue of the Statute creating it. He who would avail himself of the statutory benefits must comply with its terms."  
*97 Cal. 644.*

---

CAREFULLY COMPILED EXPRESSLY FOR

**Reuben's Old Law Book House,**  
PUBLISHERS,

**522 Montgomery St., San Francisco, Cal.**

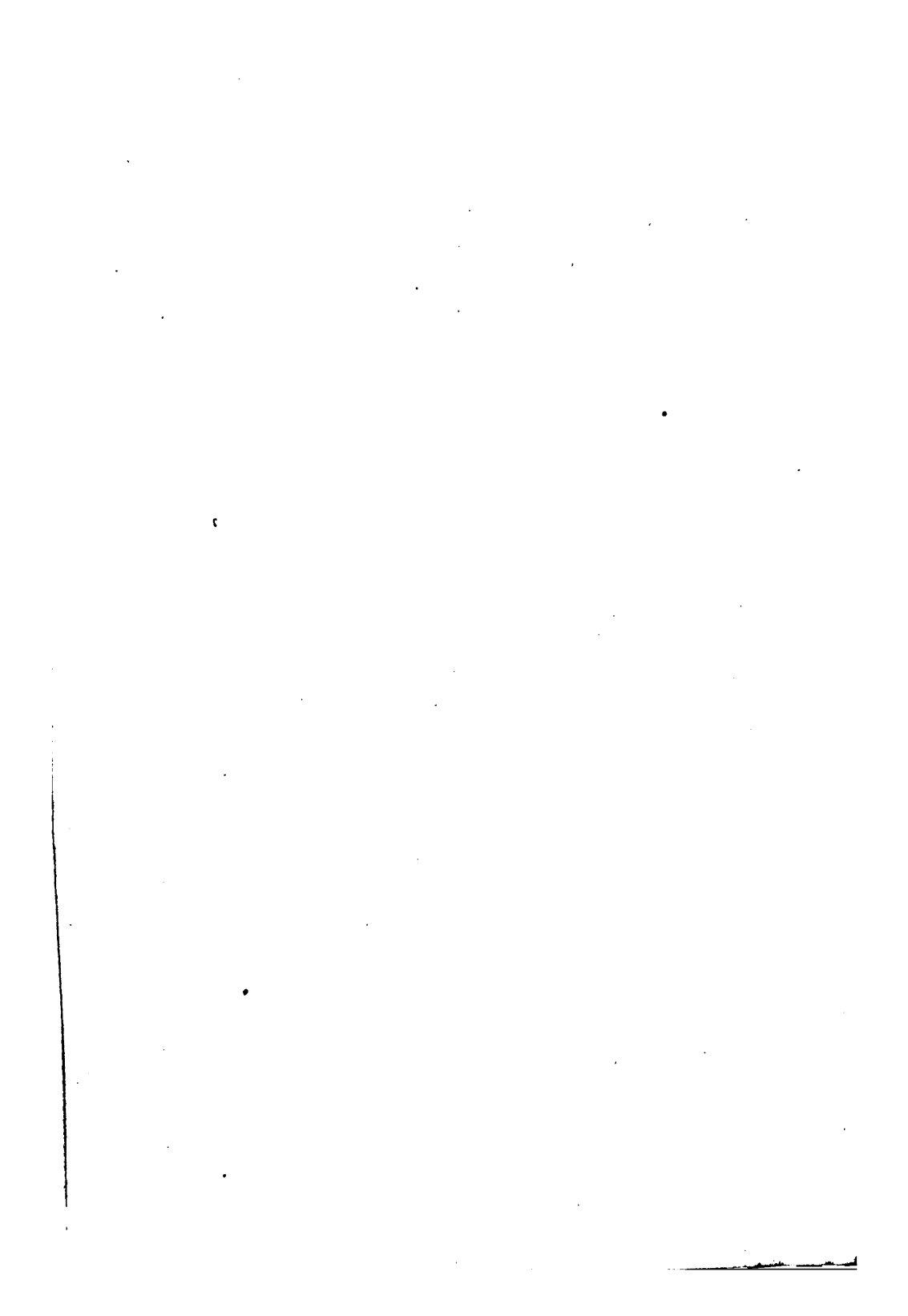
COPYRIGHT,  
1894,  
BY MOSES REUBEN.

## PREFACE.

---

This compilation of the Mechanics' Lien Law of the State of California is designed, not only for the benefit and convenience of the legal profession of the State, but also for the use of contractors, builders, members of Trades Unions, and all others who are interested directly or indirectly in the rights which the law has secured to labor. The statutory provisions regulating such liens are given in full, supplemented by brief statements of decided points, giving construction to those provisions. And it is believed that this connected view of the law, provided in a cheap and convenient form, will prove eminently acceptable to those for whose use the compilation is designed.

San Francisco, February 5th, 1894.





# CONTENTS.

---

## Section 1183.

	Page.
Who entitled to liens—To what extent—Contracts exceeding \$1,000 to be in writing—Necessary parties to the contract—Contract or memorandum to be filed—When and where to be filed—What necessary to set forth—Time of payments—Contract void if not filed—Laborers and material-men to have lien when contract void for want of filing .....	2-4

## Notes to Section 1183.

Liens the creation of Statute—Unknown to common law or equity—Alterations of buildings—When lien of material-man commences—Removal of building prevented—Annexing specifications—Services must be performed on building—Contractor must complete contract to claim lien—Architects certificate as to payment of laborers conclusive—Contract for extra work, verbal—Lien law void if not strictly complied with—Foreclosure of lien—Date of commencement of contractor's lien—Liability of owner—Contractor cannot recover damages if contract not filed—Lien of mining superintendent—Filing of claim before completion of building—Contractor furnishing laborers entitled to lien—Materials must be used in structure—Materials furnished to mine—Material-man's lien limited—Work not done in a workman-like manner; evidence relative thereto—Personal

	<b>Page.</b>
judgments not recoverable—Public buildings not subject to—Who are original contractors—Prior right of payment on county claims—Materials not used in building not entitled to lien—Painters original contractors—Description of property—Drawings and specifications to be annexed—Either contract or memorandum to be filed—Wards property not subject to, unless by order of court—Right of laborer or material-man personal—Reasonable value of work done and materials furnished recoverable although implied contract not recorded .....	4-10

#### Section 1184.

No part of contract price payable in advance of commencement of work—When installments payable—At least 25 per cent. of whole contract price payable thirty-five days after final completion—No payment prior to time when due under contract valid for purpose of defeating, diminishing or discharging any lien, except contractors—All liens except contractors payable in money—Labor and materials deemed performed and furnished at instance of contracting person—Who may give written notice of labor performed or materials furnished—How given—Notices not invalid by reason of defect in form—Duty of contracting persons on receiving notice.....	11-14
---	-------

#### Notes to Section 1184.

Completion of work by owner after abandonment—Payments by contractor to material men, and application thereof—Laborer to give notice of claim to owner before valid contractor paid in full—Effect
--

on material men and laborers where contract invalid—Effect of void building contract—Itemized account not necessary in notice—Notice to owner not required where contract invalid—What contracts affected by Amendments of 1887 to Sections 1183 and 1184, Code of Civil Procedure—Owner must withhold from contractor sufficient money whether contract recorded or not—Neglect of owner renders him liable—Where contract void laborer and material-man cannot file claim until after completion or cessation of work for thirty days on unfinished building.....	Page. 14-16
---	----------------

### Section 1185.

Amount of land lienable determined by Court—Who land must belong to—If less than fee-simple, only interest therein subject to lien.....	16-17
---	-------

### Notes to Section 1185.

Lessee's estate may be sold to satisfy lien—Lessee cannot bind lessor unless by act of lessor—Amount of land subject to lien, an issuable fact—What construed to mean—Race track not necessary to convenient use of an hotel, and club-house on fair grounds tract....	17-18
--	-------

### Section 1186.

Preferred liens.....	18
----------------------	----

### Section 1187.

Original contractors to file claims within 60 days after completion of contract—Others within 30 days—What claims filed must contain—Must be verified—	
--	--

	Page.
Trivial imperfections in work or construction not deemed lack of completion—Occupation, use, or acceptance of building by owner, or representative deemed conclusive evidence of completion in case of contracts—Cessation of work for 30 days upon any unfinished building deemed equivalent to completion—Material-man not entitled to personal judgment against owner, if lien not filed—Building erected in part only held completed, if original purpose was to erect in part only—Where contract entire, material-man's lien need not be filed until completion of—Lien for labor or materials may be filed within 30 days after completion, irrespective of acceptance or occupancy by owner, where contract void—Time of completion a question of fact—Valid contract necessary to establish conclusive evidence of completion—Cessation of labor for 30 days must be <i>bona fide</i> to bring it within meaning of Section 1187—Laborers lien must be filed within time required—Where performance necessary within definite time on or about "too indefinite" in an allegation—Valid contract where price more than \$1000 not void, where final payment becomes due 30 days after completion instead of 35 days.....	18-22

### Section 1188.

Where one claim filed against two or more buildings or other improvements, amounts against each must be designated, otherwise lien postponed to others.....	22
---	----

### Section 1189.

Recorder must record claim—Record to be indexed—Fees.....	22-23
---	-------

**Section 1190.**

Lien not binding longer than 90' days after being filed unless proceedings commenced within that time to enforce same—If a credit be given, 90 days after expiration of such credit—No lien continues longer than two years from time work completed by any agreement to give credit .....	Page. 23
--	-------------

**Section 1191.**

Liens for grading, filling or improving lots, streets or sidewalks .....	23-24
--	-------

**Section 1192.**

Buildings or improvements held constructed at instance of owners or parties interested, unless notice of non-responsibility given—Such notice must be written and posted conspicuously on premises .....	24-25
--	-------

**Section 1193.**

What contractor entitled to recover—In cases of liens actions to be defended at contractor's expense—During pendency of action owner may withhold amount for which lien filed—Owner entitled to deduct for judgments against contractor—If contractor settled with in full, owner may recover back .....	25-26
--	-------

**Section 1194.**

Priority and rank of liens—Application of proceeds of sales .....	26-27
---	-------

**Notes to Section 1194.**

	Page.
Mechanic's lien subordinate to prior recorded mortgage —Mortgage executed after materials commenced to be furnished subordinate to lien .....	27

**Section 1196.**

Materials furnished for use not subject to attachment for debt; except a debt due for purchase money thereof.	28
--	----

**Section 1197.**

Right of personal action for debt, not impaired .....	28-29
---	-------

**Section 1200.**

Failure to perform contract—Apportionment of contract price.....	29
---	----

**Notes to Section 1200.**

Lien on flume after possession by company for materials, valid—Occupation or acceptance by owner, not created by employment of painter as keeper—Aban- donment before completion does not necessitate fil- ing of lien within 30 days where owner goes on with the work .....	30-31
--	-------

**Section 1201.**

Owner and contractor cannot waive or affect liens of others.....	31
---	----

**Section 1202.**

False notice of lien forfeits same—Wilful claim for work or materials, not performed or furnished, forfeits lien —Conspiracy to show contract price less than it	
--	--

	Page.
really is, makes contract void, but laborers and material-men have lien for value against owner.....	31-32

### Section 1203.

Every contract to be accompanied by good and sufficient bond—Bond to be filed in same manner as contract or memorandum—Bond inures to benefit of laborers and material-men—Action on bond, lien not affected thereby—Except that only one satisfaction can be had—Failure to file bond renders owner and contractor jointly and severally liable in damages to sub-contractors, laborers and material-men.....	32-33
--	-------

### Section 1204.

Wages and salaries preferred claims in assignments....	33-34
--	-------

### Section 1205.

Wages and salaries preferred claims against estates of deceased persons.....	34
--	----

### Section 1206.

Notice of claims for labor in cases of executions or attachments—Disputed claims—When suit must be commenced—Officers to retain possession of sufficient funds during pendency of suit.....	35-36
---	-------

### Section 1207.

Recovery of costs on disputed claims.....	36-37
Liens on Personal Property .....	37-38
An Act giving lien to loggers and laborers employed in logging-camps.....	38-41

	Page.
An Act to secure wages of persons employed as laborers on thrashing machines.....	42
An Act to provide for payment of wages of mechanics and laborers employed by corporations.....	43

### FORMS.

Bond of Contractor.....	44
Memorandum of Contract.....	45-46
Contractor's Lien.....	46-47
Sub-Contractor's Lien.....	48-49
Material-man's Lien .....	49-50
Laborer's Lien.....	51-52
Release of Lien .....	52



# MECHANICS' LIEN LAW

— or —

## CALIFORNIA.



### CONSTITUTIONAL PROVISION.

By Section 15 of Article XX, of our State Constitution, it is provided that: "Mechanics, material men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished, and the legislature shall provide, by law, for the speedy and efficient enforcement of such liens."—Cal. Const., Art. XX, Sec. 15.

In accordance with this declaration of a right, the legislature has made provision for the liens of mechanics and others upon real property, as embodied in Chapter 2 of Title 4, part 3, of the Code of Civil Procedure, Sections 1183–1207. See Cal. Civil Code, Section 3059. These provisions, embracing the latest amendments, are given in full in the precise language of the statute, followed by a reference to judicial decisions which give construction to and apply the statute.

### **Liens of Mechanics and Others upon Real Property under the Provisions of the Code of Civil Procedure.**

Who entitled to liens—To what extent—Contracts exceeding \$1000 to be in writing—Necessary parties to the contract—Contract or memorandum to be filed—When and where to be filed. What necessary to set forth—Time of Payments—Contract void if not filed—Laborers and material—Men to have lien when contract void for want of filing.

SECTION 1183—Code of Civil Procedure—Mechanics, material-men, contractors, sub-contractors, artisans, architects, machinists, builders, miners, and all persons and laborers of every class performing labor upon or furnishing materials to be used in the construction, alteration, addition to, or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, rail-road, wagon-road, or other structure, shall have a lien upon the property upon which they have bestowed labor, or furnished materials, for the value of such labor done and materials furnished, whether at the instance of the owner or of any other person acting by his authority, or under him, as contractor or otherwise; and any person who performs labor in any mining claim or claims has a lien upon the same, and the works owned and used by the owners for reducing the ores from such mining claim or claims, for the work or labor done, or materials furnished, by each respectively, whether done

or furnished at the instance of the owner of the building or other improvement, or his agent; and every contractor, sub-contractor, architect, builder, or other person having charge of any mining, or of the construction, alteration, addition to, or repair, either in whole or in part, of any building or other improvement as aforesaid, shall be held to be the agent of the owner, for purposes of this chapter. In case of a contract for the work, between the reputed owner and his contractor, the lien shall extend to the entire contract price, and such contract shall operate as a lien in favor of all persons, except the contractor, to the extent of the whole contract price; and after all such liens are satisfied, then as a lien for any balance of the contract price in favor of the contractor. All such contracts shall be in writing when the amount agreed to be paid thereunder exceeds one thousand dollars, and shall be subscribed by the parties thereto, and the said contract, or a memorandum thereof, setting forth the names of all the parties to the contract, a description of the property to be affected thereby, together with a statement of the general character of the work to be done, the total amount to be paid thereunder, and the amounts of all partial payments, together with the times when such payments shall be due and payable,

shall before the work is commenced, be filed in the office of the county recorder of the county, or city and county, where the property is situated, who shall receive one dollar for such filing; otherwise they shall be wholly void, and no recovery shall be had thereon by either party thereto; and in such case, the labor done and materials furnished by all persons aforesaid, except the contractor, shall be deemed to have been done and furnished at the personal instance of the owner, and they shall have a lien for the value thereof. (Amendment approved March 15, 1887; Statutes and Amendments 1887, 152; to take effect from and after its passage.)

Liens the creation of statute—Unknown to common law or equity—Alterations of buildings—When lien of material-man commences—Removal of building prevented—Services must be performed on building—Contractor must complete contract to claim lien—Architect's certificate as to payment of laborers conclusive—Contract for extra work, verbal—Lien law void if not strictly complied with—Foreclosure of lien—When contractor lien commences—Liability of owner—Contractor cannot recover damages if contract not filed. Lien of mining superintendent—Filing of claim before completion of building—Contractor furnishing laborers entitled to lien—Materials must be used in the structure—Materials furnished to miners—Material-man's lien limited—Work not performed in a workmanlike manner; evidence relative thereto—Personal judgments not recoverable—Public buildings not subject to—Who are original contractors—Prior right of payment on county claims—Materials must be used in buildings—Painters original contractors—Description of prop-

erty—Drawings and specifications to be annexed—Either contract or memorandum to be filed—Ward's property not subject to unless by order of Court—Right of laborer or material-man a personal one—Reasonable value for work and materials recoverable although implied contract not recorded.

The lien of mechanics and others on buildings and the land upon which they are erected as security for the amount due them for labor performed and the materials furnished, is the creation of Statute, being unknown either at common law or in equity, and the Statute creating it must be looked to, both for the right to such lien and the mode by which it can be secured.—98 Cal., 149 ; 97 Cal., 644.

The alteration of a building such as will change its form so that it may be considered a construction comes within the lien law.—21 Cal., 80. See 98 Cal. 374, 376.

A lien of a material man commences when the materials are ready for delivery at the place agreed on.—23 Cal., 208.

Sub-contractors may prevent the removal of a building by injunction when such removal would make their security insufficient.—33 Cal., 497.

Where specifications are referred to as annexed they become a part of the contract, and if not so annexed the contract and lien are void.—37 Cal., 61.

Services must be performed on the building sought to be made subject to the lien, otherwise they are not within the Statute.—40 Cal., 188.

The contractor must complete the contract to claim the benefit of the lien law, unless prevented by the other party.—31 Cal., 234-5 ; 48 Cal., 478.

An architect's certificate that laborers are paid concludes all parties if not obtained by fraud of owner.—54 Cal., 333.

A contract for extra work, if such condition is embodied in the contract, may be verbal (54 Cal., 601) if the work conforms to the terms of the contract.—59 Cal., 1 ; 54 Cal., 601.

Lien is void if the law is not strictly complied with.—49 Cal., 337 ; 54 Cal., 218 ; 97 Cal., 644.

Where a contractor contracts to protect a building from liens the owner may retain enough to meet liens filed.—55 Cal., 179.

No foreclosure of a lien can be had until the debt is payable.—60 Cal., 439.

A contractor's lien dates from commencement of work.—6 Cal., 295. See 23 Cal., 522 ; 44 Cal., 246-250 ; 61 Cal., 349.

An owner is liable only for amount due to contractor at date of, or subsequent to, service of notice.—62 Cal., 151 ; 64 Cal., 283 ; 65 Cal., 353 ; 67 Cal., 423.

A contractor for a building cannot recover damages for not being allowed to complete the building if the contract was not filed for record.—70 Cal., 221.

A mining superintendent is entitled to claim a lien on a mine if he performs manual labor.—70 Cal., 614.

A claim filed before the completion of a building cannot be enforced.—74 Cal., 273.

A material man who is not an original contractor must file his lien within thirty days after the completion of the building.—74 Cal., 432.

One who performs labor on a structure by request of a contractor is entitled to a lien.—75 Cal., 205.

Where a contractor furnishes a number of laborers he is entitled to a lien for the money due to him for their labor.—76 Cal., 578.

Materials must be actually used in a structure to entitle a material-man to a lien.—80 Cal., 510; 83 Cal., 368.

One who supplies a mine with materials is entitled to a lien on the whole mine.—80 Cal., 510.

The amendment of 1887 makes homesteads liable to mechanics' liens filed after its passage.—81 Cal., 641.

A material man need not state in his lien how much has been furnished to each contractor separately where one who succeeds another assumes by consent all liabilities.—86 Cal., 617.

A material man's lien is limited to the amount of the contract price in the hands of the owner when the lien was filed.—86 Cal., 617.

Evidence to show that work sued for was not done in a workmanlike manner is admissible after a lienor introduces evidence to show that the labor was done in a good and workmanlike manner.—88 Cal., 146.

When the contract price of a structure exceeds One Thousand Dollars it must be written and recorded as provided by Section

1183 of the Code of Civil Procedure, and all payments of money must be made as stated therein.—88 Cal., 42.

No personal judgment can be recovered in an action to enforce a mechanic's lien as it is of the nature of a proceeding *in rem*. It is not a "claim" against an estate within the meaning of Subdivision 3 of Section 1880 of the Code of Civil Procedure.—88 Cal., 44.

Public buildings are not subject to a mechanic's lien. None can be enforced against a school house erected by a school district.—89 Cal., 114.

Where a party, in erecting a building, lets different contracts to various parties for the building of certain portions of it; these parties would be original contractors, and men employed by them would be entitled to file liens as laborers.

Papering or decorating a house is a proper subject matter of liens.—90 Cal., 375.

A material-man, or a mechanic who furnishes materials to or does work for a contractor for the erection of a county building, upon giving written notice to the county of his claim, acquires as against the contractor, a prior right of payment of his claim from the unpaid portion of the contract price.—90 Cal., 543.

One furnishing materials which were neither to be used nor used in the construction of a building is not entitled to a lien.—90 Cal., 213.

Persons contracting with an owner of a factory, to manufacture at their own shop the boiler, engine, feed-pipes and neces-



sary attachments, and deliver them finished and complete and properly set them in the building, are material-men. The work done by them on the premises of the owner, in placing them in position, did not convert them into contractors for the erection of the building or any part of it.—91 Cal., 140.

A painter who contracts with the owner to paint a building and furnish the necessary materials therefor, is an original contractor. If his contract provides for payment of part of the contract price in land it does not render the contract void. See Section 1184.—92 Cal., 235.

A description in a claim of lien of the property sought to be charged is sufficient if it enables a party familiar with the locality to identify the premises.—94 Cal., 205.

Where a building contract provides that the contractor shall do the work contracted for according to certain drawings and specifications, referred to in the contract as being "hereto annexed," the drawings and specifications are an essential part of the contract, and they should be filed in the recorder's office, and a failure so to do destroys the validity of the contract.—94 Cal., 229.

An owner or contractor can file either the contract or a memorandum; if he files the contract, he must file the whole of it, including the drawings and specifications, if they were made a part thereof; the memorandum must contain all the matters required by the Statute to be stated therein.—94 Cal., 229.

The memorandum filed can have no higher force than the contract itself, if the contract fails to comply with the require-

ments of the Statute, the memorandum will also fail.—94 Cal., 229.

In an action to foreclose a lien under Sections 1183 and 1184 of the Code of Civil Procedure, where the claimants sue for materials furnished, at the special instance and request of the owner, the contract with the original contractors being void, it is not necessary the complaint should set out the original contract and allege its invalidity; the plaintiff may show such matters in evidence.—94 Cal., 558.

Under Section 1183 of the Code of Civil Procedure, the failure to file the contract or memorandum containing the statements required by the Statute renders the contract wholly void for all purposes.—94 Cal., 229; 97 Cal., 644; 98 Cal., 149.

The reasonable value of work done and materials furnished in the erection of a building is recoverable, although their value exceeds one thousand dollars. And a recovery is not defeated either by the fact that the implied contract for reasonable value was not recorded, or that the work and materials were done and furnished in pursuance of a written contract which was not filed for record in accordance with the Statute.—95 Cal., 390.

A minor's guardian cannot subject the property of the ward to a mechanic's lien, for work done and materials furnished for the erection or repair of a building, the property of the ward, without first obtaining an order of the court, authorizing the guardian to make the contract.—96 Cal., 484.

The right of a laborer or material-man to create a lien under the mechanic's lien law is personal, and cannot be assigned. 97 Cal., 254.

No part of contract price payable in advance of commencement of work—When installments payable—At least 25 per cent. of whole contract price payable 35 days after final completion—No payment prior to time when due under contract, valid for purpose of defeating, diminishing or discharging any lien, except contractors—All liens except contractors' payable in money—Labor and materials deemed performed and furnished at instance of contracting person—Who may give written notice of labor performed or materials furnished—How given—Notices not invalid by reason of defect in form—Duty of contracting persons on receiving notice.

SECTION 1184. No part of the contract price shall, by the terms of any such contract, be made payable, nor shall the same, or any part thereof, be paid in advance of the commencement of the work, but the contract price shall, by the terms of the contract, be made payable in installments at specified times after the commencement of the work, or on the completion of specified portions of the work, or on the completion of the whole work; provided, that at least twenty-five per cent. of the whole contract price shall be made payable at least thirty-five days after the final completion of the contract. No payment made prior to the time when the same is due, under the terms and conditions of the contract, shall be valid for the purpose of defeating, diminishing, or discharging any lien in favor of any person, except the contractor, but as to such liens such payment shall be deemed as if not

made, and shall be applicable to such liens, notwithstanding that the contractor to whom it was paid may thereafter abandon his contract, or be or become indebted to the reputed owner in any amount for damages or otherwise, for non-performance of his contract or otherwise. As to all liens, except that of the contractor, the whole contract price shall be payable in money, and shall not be diminished by any prior or subsequent indebtedness, offset, or counterclaim in favor of the reputed owner and against the contractor; no alteration of any such contract shall affect any lien acquired under the provisions of this Chapter. In case such contracts and alterations thereof do not conform substantially to the provisions of this Section, the labor done and the materials furnished by all persons except the contractor, shall be deemed to have been done and furnished at the personal instance and request of the person who contracted with the contractor, and they shall have a lien for the value thereof. Any of the persons mentioned in Section eleven hundred and eighty-three, except the contractor, may at any time give to the reputed owner a written notice that they have performed labor or furnished materials, or both, to the contractor, or other person acting by authority of the reputed owner, or that they have agreed

to do so, stating in general terms the kind of labor and materials, and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both. Such notice may be given by delivering the same to the reputed owner personally, or by leaving it at his residence or place of business, with some person in charge, or by delivering it to his architects, or by leaving it at their residence or place of business, with some person in charge, or by posting it in a conspicuous place upon the mining claim or improvement. No such notice shall be invalid by reason of any defect of form, provided it is sufficient to inform the reputed owner of the substantial matters herein provided for, or to put him upon inquiry as to such matters. Upon such notice being given, it shall be the duty of the person who contracted with the contractor to, and he shall, withhold from his contractor, or from any other person acting under such reputed owner, and to whom by said notice the said labor or materials, or both, have been furnished, or agreed to be furnished, sufficient money due or that may become due, to such contractor or other person, to answer such claim, and any lien that may be filed

therefor for record under this chapter, including counsel fees not exceeding one hundred dollars in each case, besides reasonable costs provided for in this chapter (Amendment approved March 15, 1887; Statutes and Amendments 1887, 152; to take effect from and after its passage).

Completion of work by owner after abandonment—Payments by contractor to material-men—Application thereof—Laborer to give notice of claim to owner before valid contractor paid in full—Effect on laborers and material-men where contract invalid—Effect of void building contract—Itemized account not necessary in notice—Notice to owner not required where contract invalid—What contracts affected by amendments of 1887 to Sections 1183-84 Code of Civil Procedure—Owner must withhold from contractor sufficient money whether contract recorded or not—Neglect of owner renders him liable—Where contract valid laborer or material-man cannot file claim until after completion, or cessation of work for thirty days on unfinished building.

Where a contractor abandons a contract before completion, the owner cannot complete the work at his expense without giving notice required by the contract.—48 Cal., 478.

Payments made by contractor to material-men must be applied to materials furnished the building and not to an open account.—54 Cal., 640.

One who performs labor for a contractor must give notice of his claim in some way to the owner of the property before he has paid the contractor in full for the building or improvements which the contractor is employed to construct.—76 Cal., 508.

Where a contract is invalid, material-men and laborers are deemed employed directly by the owner, though they cannot recover a judgment against him personally.—81 Cal., 170; 81 Cal., 640.

Where a building contract is void, by reason of failure to record, it is only so between the parties. It does not affect the right of material-men or laborers to a lien.—78 Cal., 193.

A notice of lien need not contain an itemized account, nor state the value of labor performed, or materials furnished.—81 Cal., 144.

Contracts for a price over one thousand dollars are void unless recorded; and if void, sub-contractors, laborers and material-men may enforce their liens, without regard to what is due to the contractor.—81 Cal., 641; 81 Cal., 170.

Notice to the owner is not requisite unless there is a valid contract between the contractor and owner.—81 Cal., 170.

The amendments of 1887 to Sections 1183 and 1184 of the Code of Civil Procedure do not affect contracts where the price is less than one thousand dollars.—82 Cal., 42.

Section 1184 of the Code of Civil Procedure applies only where contracts are in excess of One Thousand Dollars.—86 Cal., 22.

Whether a contract is recorded or not the owner must, on notice, withhold from the contractor sufficient money to pay the material man's claim.—87 Cal., 589.

Neglect of the owner to retain for thirty-five days after the completion of the work and contract, and to pay over 25 per

cent. of the contract price, renders him liable to those entitled to that extent, less any lawful credits.—90 Cal., 590.

A laborer or material-man must file his claim therefor in the Recorder's office within the time limited by the Statute.—94 Cal., 229.

Where a contract is void there is neither a "contract" nor an "original contractor," and a laborer or material man, in order to perfect his lien, cannot file his claim therefor until after the actual completion of the building, or until after there had been a cessation from labor for thirty days upon the unfinished building.—94 Cal., 229.

Amount of land lienable determined by Court—Who land must belong to—  
If less than fee simple only interest therein subject to lien.

SECTION 1185—The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the work, or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed, altered or repaired, but if such person owned less than a fee-simple estate in such land,



then only his interest therein is subject to such lien. (Amendment, approved March 24, 1874; Amendments 1873-4, 351; took effect July 1, 1874.).

**Lessee's estate may be sold to satisfy lien—Lessee cannot bind lessor unless by act of lessor—Amount of land subject to lien an issuable fact—What construed to mean—Race-track not necessary to convenient use of on hotel and club house on fair-grounds tract—**

A lessee's estate is subject to a mechanic's lien, and may be sold to satisfy it.—36 Cal., 623 ; 80 Cal., 275.

A lessee cannot bind his lessor by a mechanic's lien unless the lessor has by some act made his estate liable.—36 Cal., 623.

The amount of land subject to a lien for work done or materials furnished for a structure thereon is an issuable fact, to be determined by the Court where presented by the pleadings.—94 Cal., 205.

“The land upon which a building is erected, together with a convenient space about the same,” is construed to mean such space or area of land as is necessary to the enjoyment of the building, for the purpose for which it was constructed, and the uses to which it is put must determine the quantity of land necessary to the convenient use and occupation of the building.—98 Cal., 285.

A race track and training stables, grand stands, corrals and other improvements belonging to an agricultural park association and situated upon its fair grounds tract, is not necessary to the convenient use and occupation of a building erected for

a hotel, club house and saloon upon such fair grounds tract, and cannot be made subject to a lien for the erection of such building.—98 Cal., 285.

**Preferred liens.**

**SECTION 1186**—The liens provided for in this chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, or structure was commenced, work done, or materials were commenced to be furnished; also to any lien, mortgage, or other incumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished.

Original contractors to file claims within sixty days after completion of contract—Others within thirty days—What claims filed must contain—Must be verified—Trivial imperfections in work or construction not deemed lack of completion—Occupation, use or acceptance of building by owner or representatives deemed conclusive evidence of completion in case of contracts—Cessation of work for thirty days upon any unfinished building deemed equivalent to completion—Material-men not entitled to personal judgment against owner if lien not filed—Building erected in part only, held completed if original purpose was to erect in part only—Where contract entire material-man's lien need not be filed until completion of—Lien for labor or materials may be filed within thirty days after completion, irrespective of acceptance or occupancy by owner where contract void—Time of completion a question of fact—Valid contract necessary to establish conclusive evidence of completion—

Cessation of labor for thirty days must be bona fide to bring it within meaning of Section 1189—Laborer's lien must be filed within time required—where performance necessary within definite time, "on or about" too indefinite in an allegation—Valid contract where price more than \$1000 not void where final payment becomes due 30 days after completion instead of 35.

SECTION 1187—Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration, addition to, or repair thereof, or the performance of any labor in a mining claim, filed for record with the county recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself, or of some other person; any trivial imperfection in the said work, or in the construction of any

building, improvement, or structure, or of the alteration, addition to, or repair thereof, shall not be deemed such a lack of completion as to prevent the filing of any lien; and in case of contracts the occupation or use of the building, improvement, or structure, by the owner, or his representative, or the acceptance by said owner or his agent of said building, improvement, or structure, shall be deemed conclusive evidence of completion, and cessation from labor for thirty days upon any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof for all the purposes of this chapter. (Amendment, approved March 15, 1887; Statutes and Amendments 1887, 152; to take effect from and after its passage).

A material-man who has filed no lien for materials furnished a contractor, is not entitled to a personal judgment against the owner of the building.—74 Cal., 625.

A building erected in part only is held to be completed when it was the original purpose of the owner to erect it in part only, or when, having proceeded to erect it in part, he abandoned his design to finish it.—74 Cal., 432.

Where the original contract is entire, a material-man's lien need not be filed until the completion of the contract.—80 Cal., 510.

Where a contract between the owner and a contractor for the erection of a building is void, because not filed before the work is commenced, a claim of lien for labor or materials may be filed at any time within thirty days after the actual completion of the building, irrespective of its previous acceptance and occupancy by the owner.—94 Cal., 205.

The time of completion of a building is a question of fact for the Trial Court to determine.—94 Cal., 205.

A valid contract between the owner and original contractor is necessary to establish conclusive evidence of completion of a building, by occupation, use or acceptance as provided in Section 1187, of the Code of Civil Procedure.—94 Cal, 229.

Cessation of labor for thirty days, to bring it within the meaning of Section 1187 of the Code of Civil Procedure, must be a *bona fide* cessation and such that will carry some charge of notice to a careful person.—96 Cal., 332.

A laborer's lien must be filed within the time required by law to make it valid.—76 Cal., 508.

A material-man's lien need not be filed until the contract is completed, where the original contract is entire.—80 Cal., 510.

Where the right of a person depends upon performance within a definite number of days, it is necessary to allege and prove that the performance was made within the time required by law. "On or about" would be too indefinite an expression in an allegation that plaintiff had filed his notice of lien "on or about" a certain time.—89 Cal., 88.

A valid recorded contract, where the price is more than one thousand dollars, is not rendered void by the fact that a final payment is to become due thirty days after completion of a building instead of thirty-five days, as required by Section 1183 of the Code of Civil Procedure.—90 Cal., 579.

Where one claim is filed against two or more buildings, amounts against each must be designated, otherwise lien is postponed to others.

SECTION 1188—In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims, or other improvements; otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

Recorder must record claim—Record to be indexed—Fees.

SECTION 1189—The recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are

required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

**Lien not binding longer than 90 days after being filed, unless proceedings commenced within that time to enforce same—If a credit be given, 90 days after expiration of such credit—No liens continue longer than two years from time work completed by any agreement to give credit.**

**SECTION 1190—**No lien provided for in this chapter binds any building, mining claim, improvement, or structure for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than two years from the time the work is completed, by any agreement to give credit.

Notwithstanding the insolvency of a debtor, action must be brought within ninety days.—63 Cal., 122.

**Liens for grading, filling or improving lots, streets, or sidewalks.**

**SECTION 1191—**Any person who, at the request of the reputed owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street or side-walks in front of or adjoin-

ing the same, or constructs any areas, or vaults, or cellars, or rooms, under said side-walks, or makes any improvements in connection therewith, has a lien upon said lot for his work done and materials furnished. (Amendment, approved March 15, 1887; Statutes and Amendments 1887, 152; to take effect from and after its passage).

Buildings or improvements held, constructed at instance of owner or parties interested, unless notice of non-responsibility given—Such notice must be written and posted conspicuously on premises.

SECTION 1192--Every building or other improvement mentioned in section eleven hundred and eighty-three of this code, constructed upon any lands with the knowledge of the owner, or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this chapter, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, or the intended construction, alteration, or repair, give notice that he will not be responsible for the



same, by posting a notice in writing to the effect, in some conspicuous place upon said land, or upon the building or other improvement situated thereon. (Amendment approved March 30, 1874; Amendments 1873-4, 410; took effect sixtieth day after passage).

An owner or claimant who knowingly allows buildings, or improvements on land, without giving notice that it is without his consent, will be held to have acquiesced therein.—41 Cal., 583.

What contractor entitled to recover—In case of lien, actions to be defended at contractor's expense—During pendency of action owner may withhold amount for which lien is filed—Owner entitled to deduct for judgments against contractor—If contractor settled with in full, owner may recover back.

SECTION 1193—The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed, under this chapter, for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which lien is filed; and in

case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due or to become due by him to the contractor the amount of such judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full he shall be entitled to recover back from the contractor any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable. (Amendment approved March 30, 1874; Amendments 1873-4, 411; took effect sixtieth day after passage).

Priority and rank of liens—Application of proceeds of sale.

SECTION 1194—In every case in which different liens are asserted against any property, the Court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz.:—

1. All persons performing manual labor in, on, or about the same.
2. Persons furnishing materials.
3. Sub-contractors.
4. Original contractors.

And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank ; and whenever, in the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages. (Amendment, approved March 18, 1885 ; Statutes and Amendments 1885, 145.)

**Mechanic's lien subordinate to prior recorded mortgage—Mortgage executed after materials commenced to be furnished subordinate to lien.**

A mechanic's lien is subordinate to a prior recorded mortgage, and such mortgagee need not give notice of non-responsibility for cost of improvement required of claimants of interests by Section 1192 of the Code of Civil Procedure.—66 Cal., 193.

A mortgage executed after the time when materials were commenced to be furnished is subordinate to the lien of the material man.—87 Cal., 619.

**SECTION 1195—**Any number of persons claiming liens may join in the same action, and when separate actions are commenced the Court may consolidate them. The Court must also allow, as a part of the costs, the money paid for filing and recording the lien, and reasonable attorney's fees in the superior and supreme courts, such costs and attorney's fees to be allowed to each lien

claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action or separate actions are consolidated. (Amendment, approved March 18, 1885 ; Statutes and Amendments 1885, 146.)

**Materials furnished for use not subject to attachment for debt—except a debt due for purchase money thereof.**

SECTION 1196—Whenever materials shall have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement. (Amendment, approved March 30, 1874; Amendments 1873-4, 412; took effect sixtieth day after passage.

**Right of personal action for debt not impaired—**

SECTION 1197—Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done

or materials furnished to maintain a personal action to recover such debt against the person liable therefor. (Amendment, approved March 24, 1874; Amendments 1873-4, 351; took effect July 1, 1874.)

SECTION 1198—Except as otherwise provided in this chapter, the provisions of Part II of this code, are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

SECTION 1199—The provisions of Part II of this code, relative to new trials and appeals, except in so far as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

**Failure to perform contract—Apportionment of contract price—**

SECTION 1200—In case the contractor shall fail to perform his contract in full or shall abandon the same before completion, the portion of the contract price applicable to the liens of other persons than the contractor shall be fixed as follows : From the value of the work and materials already done and furnished at the time of such failure or abandonment, including materials then actually delivered or on the ground, which shall thereupon belong to the owner, estimated as near as may be by the standard of the whole contract price, shall be

deducted the payments then due and actually paid, according to the terms of the contract and the provisions of sections eleven hundred and eighty-three and eleven hundred and eighty-four, and the remainder shall be deemed the portion of the contract price applicable to such liens. (New Section, approved March 18, 1885 ; Statutes and Amendments 1885, 146.)

Lien on flume, after possession by company, for materials, valid—Occupation or acceptance by owner, not created by employment of painter as keeper—Abandonment before completion does not necessitate filing of lien within 30 days where owner goes on with the work—

A lien filed within thirty days for materials used on a flume after the company took possession and control and completed it, the contractor having abandoned the work by consent before completion, is valid.

The company by its action "occupies," "uses" and "accepts it" within the meaning of the Code of Civil Procedure.—88 Cal., 20.

In an action to enforce liens for labor and materials furnished after the abandonment of the contract by the contractor, he need not be made a party to the action.—94 Cal., 49.

An "occupation" or "acceptance" of a building by the owner is not created by the employment of a painter as keeper, who lives in the building while painting it, after the contractor has abandoned the work.—96 Cal., 332.

The abandonment of work upon a building, by a contractor, before its completion does not necessitate the filing of a lien within thirty days thereafter, where the owner goes on with the work, and does not "occupy" or "accept" the building.—96 Cal., 332.

Owner and contractor cannot waive or affect liens of others—

SECTION 1201—It shall not be competent for the owner and contractor, or either of them by any term of their contract, or otherwise, to waive, affect, or impair the claims and liens of other persons whether with or without notice, except by their written consent, and any term of the contract to that effect shall be null and void. (New section approved March 18, 1885; Statutes and Amendments 1885, 146).

False notice of lien forfeits same—Willful claim for work or materials not performed or furnished, forfeits lien—Conspiracy to show contract price less than it really is, makes contract void—but laborers and materialmen have lien for value against owner—

SECTION 1202—Any person who shall wilfully give a false notice of his claim to the owner, under the provisions of section eleven hundred and eighty-four shall forfeit his lien. Any person who shall wilfully include in his claim filed under section eleven hundred and eighty-seven, work or materials not performed upon or

furnished for the property described in the claim, shall forfeit his lien. If the owner and his contractor shall directly or indirectly conspire to or agree that the written contract filed shall appear to show the contract price to be less than it really is, and it shall accordingly so show, then such contract shall be wholly void and no recovery shall be had thereon by either party thereto and in such case the labor done and materials furnished by all persons, except the contractor, shall be deemed to have been done and furnished at the personal instance of the owner, and they shall have a lien for the value thereof. (New section approved March 18, 1885; Statutes and Amendments 1885, 146).

Every contract to be accompanied by good and sufficient bond—Bond to be filed in same manner as contract or memorandum—Bond inures to benefit of laborers and material-men—Action on bond—Lien not affected thereby, except that only one satisfaction can be had—Failure to file bond renders owner and contractor jointly and severally liable in damages to sub-contractors, laborers and material men—

SECTION 1203—Every contract required to be filed under the provisions of this chapter shall be accompanied by a good and sufficient bond in an amount equal to at least twenty-five per cent of the contract price, which said bond shall be filed at the same time and in the same manner as herein provided for the fil-



ing of such contract, or memorandum thereof. Said bond shall, by its terms, be made to inure to the benefit of any and all persons who perform labor for, or furnish materials to the contractor, or any person acting for him, or by his authority; and any such person shall have an action to recover upon said bond, against the principal and sureties, or either of them, for the value of such labor or materials, or both, not exceeding the amount of the bond; but such action shall not affect his lien, nor any action to foreclose the same, except that there shall be but one satisfaction of his claim, with costs and counsel fees. Any failure to comply with the provision of this section shall render the owner and contractor jointly and severally liable in damages to any and all material-men, laborers, and sub-contractors entitled to liens upon the property affected by said contract. (New section approved March 23, 1893. Statutes and Amendments 1893 202).

**Wages and salaries preferred claims in assignments.**

**SECTION 1204**—In all assignments of property made by any person to trustees or assignees, on account of the inability of the person at the time of the assignment, to pay his debts, or in proceedings in insolvency,

the wages and salaries of the miners, mechanics, salesmen, servants, clerks, laborers employed by such person, or any other person who renders services or performs work to the amount of one hundred dollars each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. (Amendment approved March 9, 1893. Statutes and Amendments, 1893, 97.)

Wages and salaries preferred claims against estates of deceased persons.

SECTION 1205—In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, laborer or any other person who renders services or performs work, for services rendered within the sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate, and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. (Amendment approved March 9, 1893. Statutes and Amendments, 1893, 97.)

---

Notice of claims for labor in cases of executions or attachments—Disputed claims—When suit must be commenced—Officer to retain possession of sufficient funds during pendency of suit.

SECTION 1206—In cases of executions, attachments, and writs of a similar nature, issued against any person except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, and laborers, or any other person who renders services or performs work, who have claims against the defendant for labor done or work performed, may give notice of their claims, and the amount thereof, sworn to by the person making the claim, to the creditor and the officer executing either of such writs, at any time before the actual sale of property levied on or in the event of a levy upon money, at any time before the transfer of such money under execution; and, unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, or in the event of a levy on money, out of such money, the amount each is entitled to receive for services rendered within the sixty days next preceeding the levy of the writ, not exceeding one hundred dollars. If any or all of the claims so presented and claiming preference under this section are disputed by either the debtor or a creditor, the person presenting the same must com-

---

mence an action within ten days for the recovery thereof, and must prosecute his action with due diligence or be forever barred from any claim or priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale or money as may be necessary to satisfy such claim until the determination of such action; and in case judgment be had for the claim, or any part thereof, carrying costs, the cost taxable therein shall likewise be a preferred claim, with the same rank as the original claim. (Amendment approved March 9, 1893. Statutes and Amendments, 1893, 87.)

**Recovery of costs on disputed claims.**

SECTION 1207—The debtor or creditor intending to dispute a claim presented under the provisions of the last section shall, within ten days after receiving notice of such claim, serve upon the claimant and the officer executing the writ, a statement, in writing, verified by the oath of the debtor, or the person disputing such claim, setting forth that no part of said claim, or not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the sixty days next preceeding the levy of the writ. If the claimant brings suit on a claim which is disputed

in part only, and fail to recover a sum exceeding that which was admitted to be due, he shall not recover costs, but costs shall be adjudged against him. (New section, approved March 7, 1883; Statutes and Amendments 1883, 47.)

### LIENS ON PERSONAL PROPERTY.

The Civil Code regulates liens on personal property as follows: "A person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling

the property; the remainder, if any, must be paid over to the owner thereof."—Cal. Civ. Code, Sec. 3052.

Under this section, one who enters upon land under a contract with the owner, for the purpose of manufacturing railroad ties and shakes for the latter, has a lien upon the manufactured articles for the amount due for manufacturing them, and the right to retain possession thereof until the lien is discharged by the payment of the amount due him under the contract.—92 Cal., 656.

AN ACT GIVING A LIEN TO LOGGERS AND LABORERS EMPLOYED IN LOGGING CAMPS UPON THE LOGS CUT AND HAULED BY THE PERSONS WHO EMPLOYED THEM.

(Approved March 30th, 1878; 1877-8, 747.)

SECTION 1—A person who labors at cutting, hauling, rafting, or driving logs or lumber, or who performs any labor in or about a logging camp, necessary for the getting out or transportation of logs or lumber, shall have a lien thereon for the amount due for his personal services, which shall take precedence of all other claims, to continue for thirty days after the logs or lumber arrive at the place of destination, for sale or manufacture, except as hereinafter provided. (Amendment, approved April 12, 1880; 1880, 38 (Ban. ed. 191); took effect from passage.)

SECTION 2. The lien hereby created shall cease and determine unless the claimant thereof shall, within twenty days from the time such labor shall have been completed, filed and recorded in the office of the County Recorder of the county where such labor was performed a verified claim, containing a statement :

1.—Of his demand, after deducting all just credits and offsets ;

2.—The time within which such labor was done ;

3.—The name of the person or persons for which the same was done ;

4.—The place where the logs or timber upon which such lien is claimed are believed to be situated, and the marks upon the same ;

5.—The reputed owner thereof ; and

6.—The reputed owner of the land from which the same were cut and hauled.

SECTION 3—All liens hereby provided for shall cease and determine unless suit to foreclose the same shall be commenced in the proper Court within twenty-five days from the time the same are filed. (Amendment, approved April 12, 1880; Amendments 1880-39 (Ban. ed. 191); took effect from passage.)

SECTION 4—The plaintiff in any such suit, at the time of issuing the summons, or at any time afterward, may have the logs or timber upon which such lien subsists attached, as further security for the payment of any judgment he may recover, unless defendant give him good and sufficient security to pay such judgment, in which event such logs shall be forthwith discharged by the Sheriff from such attachment, and from the lien hereby created.

SECTION 5—The Clerk of the Court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing:

1. That defendant is indebted to the plaintiff upon a demand for labor, for which his claim has been duly filed in accordance with Section two of this Act;

2. That the sum for which the attachment is asked is an actual *bona fide* existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor or creditors of the defendant.

SECTION 6—The writ must be directed to the Sheriff of the county, and must require him to attach and safely keep the logs and timber specified in such lien,



or so much thereof as may be sufficient to satisfy plaintiff's demand, unless the defendant give good and sufficient security, as provided in this act, in which case, to take such security and discharge any attachment he may have made, and to deliver up such logs to the defendant, who shall receive the same free from the lien upon which suit is brought.

SECTION 7—Sections five hundred and thirty-nine, eleven hundred and eighty-nine, eleven hundred and ninety-one, eleven hundred and ninety-seven, eleven hundred and ninety-eight, and eleven hundred and ninety-five of the Code of Civil Procedure are hereby made applicable to this act.

SECTION 8—Such attachment shall be made by taking such logs into possession, and the Sheriff shall make an inventory and return of his proceedings as directed in Chapter IV., Title VII., of the Code of Civil Procedure.

SECTION 9—The lien provided for by this act shall in no case extend beyond the limits of the county in which the logs or timber in controversy were cut.

SECTION 10.—This act shall take effect and be in force from and after its passage.

AN ACT TO SECURE THE WAGES OF PERSONS EMPLOYED AS  
LABORERS ON THRESHING-MACHINES.

(Approved March 12, 1885; 1885, 109.)

SECTION 1—Every person performing work or labor of any kind in, with, about, or upon any thrashing-machine, the engine, horse-power, wagons, or appurtenances thereof, while engaged in thrashing, shall have a lien upon the same to the extent of the value of his services.

SECTION 2—The lien herein given shall extend for ten days after the person has ceased such work or labor.

SECTION 3—If judgment shall be recovered in any action to recover for said services for work or labor performed, and said property shall be sold, the proceeds of such sale shall be distributed pro rata to all judgment creditors who have, within ten days, begun suits to recover judgments for the amount due them for such work.

SECTION 4—The lien shall expire unless a suit to recover the amount of the claim is brought within ten days after the party ceases work.

AN ACT TO PROVIDE FOR THE PAYMENT OF THE WAGES OF  
MECHANICS AND LABORERS EMPLOYED BY CORPORATIONS.

(Approved March 31, 1891.)

*The people of the State of California, represented in Senate  
and Assembly, do enact as follows :—*

SECTION 1—Every corporation doing business in this State shall pay the mechanics and laborers employed by it the wages earned by and due them weekly or monthly, on such day in each week or month as shall be selected by said corporation.

SECTION 2—A violation of the provisions of Section 1 of this Act shall entitle each of the said mechanics and laborers to a lien on all the property of said corporation for the amount of their wages, which lien shall take preference over all other liens, except duly recorded mortgages or deeds of trust; and in any action to recover the amount of such wages or to enforce said lien the plaintiff shall be entitled to a reasonable attorney's fee, to be fixed by the Court, and which shall form a part of the judgment in said action, and shall also be entitled to an attachment against said property.

## FORMS.

### Bond to Accompany Contract.

*Know all men by these presents :*

That....., as principal, and.....and....., as sureties, all of the City and County of San Francisco, State of California, are held and firmly bound unto....., also of said City and County and State, in the sum of \$....., of the United States of America, to be paid to the said....., his heirs, executors, administrators or assigns : for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents. Signed, sealed, and dated the..... day of....., 189..

The condition of the above obligation is such, that, whereas the above bounden.....has entered into a contract to erect six frame flats on a lot of ground as described in said contract for the sum of \$....., according to plans and specifications prepared by....., architect.

Now, if the above bounden.....shall well and faithfully perform his contract, and hand over the buildings within the contract time for completion free from all liens, claims, demands, or judgments, and shall hold harmless the aforesaid....., then the above obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed, and delivered	}	.....
in the presence of :		
.....		
.....		

---

### Memorandum of Contract.

Memorandum of a contract, made in writing and executed and subscribed by the parties thereto, at the City and County of San Francisco, the.....day of....., 1894.

First—The names of all the parties to said contract are .....who is designated therein as the owner, and.....who is named and designated therein as the contractor.

Second—The property to be affected by said contract is situated in the City and County of San Francisco, State of California, and is particularly described as follows, to wit: ....

Third—The general character of the work to be done under said contract is as follows, to wit: The said....., as contractor, agrees with said....., as owner, to furnish the necessary labor and materials, including tools, implements, and appliances required in the execution of the *carpenter work, tinning, plastering* and other work *for six frame flats* in a workmanlike manner, in conformity with the plans, drawings and specifications for the same, made by....., the authorized architect, employed by the owner, and which are signed by the parties hereto, and are to be kept and remain in the office of said architect, subject to the inspection of the parties hereto and others concerned in said erection,

Fourth—The total amount to be paid under said contract is the sum of \$..... in U. S. gold coin, which sum is to be paid to the said contractor by the said owner in partial payments.

Fifth—The amounts of all partial payments, together with the times when such payments shall be due and payable, are as follows, to wit: 1st. When the rough frame is up, \$..... 2nd. When the brown coat is on, \$..... 3rd. When the white coat is on, \$..... 4th. When the entire building is completed and accepted, \$..... 5th. 35 days after completion, \$.....

Provided, that when each payment or instalment shall

become due, and at the final completion of the work, certificates in writing shall be obtained from the said architect, stating that the payment or instalment is due or the works completed, as the case may be, and the amount then due; and the said architect shall at said times deliver said certificate under his hand to the contractor, or in lieu of such certificate shall deliver to the contractor, in writing under his hand, a just and true reason for not issuing the certificate, including a statement of the defects, if any, to be remedied to entitle the contractor to the certificate or certificates. And, in the event of the failure of the architect, to furnish and deliver said certificates, or any of them, or in lieu thereof the writing aforesaid, within three days after the time aforesaid, and after demand therefor made in writing by the contractor, the amount which may be claimed to be due by the contractor, and stated in said demand made by him for the certificate, shall, at the expiration of said three days, become due and payable, and the owner shall be liable and bound to pay the same on demand.

In case the architect delivers the writing aforesaid in lieu of the certificate, then a compliance by the contractor with the requirements of said writing shall entitle the contractor to the certificate.

In witness whereof, the said ..... and ..... have this ..... day of ....., 189.. subscribed their names hereunto as a memorandum of said contract.

Witness, .....  
 .....  
 \_\_\_\_\_

### Lien of Contractor.

State of California,	} ss.	
City and County of San Francisco.		
.....	}	..... of the City and
vs.		County of San Francisco, hereby
.....		gives notice that he has performed
		labor upon and furnished materials used in the construction of

that certain building now upon that certain lot of land situate in the City and County of San Francisco, State of California, and described as follows, to wit:

That..... is the name of the owner, or reputed owner, of said premises who caused said building to be erected.

That said ....., as such contractor and agent of said owner, entered into a contract in writing with said..... by which said labor was to be performed, and was fully performed, and materials furnished, and the following is a statement of the terms, time given, and condition of said contract, to wit:

That said contract was fully performed and completed, and said building finished on the ..... day of ....., 1894, and sixty days have not elapsed since the same was completed:

That the amount of the contract price for said labor performed and materials furnished is \$..... in U.S. gold coin.

That \$..... in U. S. gold coin has been paid on said contract price, and that the sum of \$..... in gold coin of the U. S. is still due and owing, after deducting all just credits and offsets to said .....

Wherefore, said ..... claims the benefit of the law relative to liens of mechanics and others upon real property as per Code of Civil Procedure, Chapter II, Title IV, Part III.

State of California, }  
City and County of San Francisco. } ss.

....., being duly sworn, deposes and says, that he is the individual and contractor named in the foregoing Claim of Lien; that he has read the same and knows the contents thereof, and that the same is true, and that it contains a correct statement of his demand, after deducting all just credits and offsets.

Subscribed and sworn to before }  
me this .. day of .... 189. }

[Seal.] ....., Notary Public.

State of California,  
City and County of San Francisco. }

Partners in trade doing business under  
the firm name and style of  
..... & .....  
..... vs.  
.....

} Lien of Sub-Contractor.

Notice is hereby given that.....and.....of the City and County of San Francisco, are now and during all the times herein mentioned were partners in trade, doing business under the firm name of....., and that they have performed labor and furnished materials, which said labor was performed on, and the said materials were furnished to be and were actually used in the erection and construction of that certain building or structure and now upon that certain lot and parcel of land situated in the City and County of San Francisco, and sought to be charged with this lien, and described as follows, to-wit: .....

That....., is the name of the contractor, who on or about the .. day of ....., 189.., entered into a contract with said ..... to furnish all labor and materials to erect and construct said structure, and who on or about the .. day of ....., 189.., as such contractor entered into a contract with said ..... as partners aforesaid, under and by which said ..... agreed to and did furnish all the labor and materials necessary in doing all the *plumbing, gasfitting, and tinning* in and on said structure or building for the sum of.....dollars to wit: the sum of.....dollars for all the *tinning*, to be done on and in said building according to plans and specifications of said building, and that said..... did also, in addition to that agreed upon, perform extra labor and furnish extra materials in doing *plumbing, gasfitting, and tinning* in and on said building or structure, and that the value thereof is the sum of.....dollars. That the following is a statement of the terms, time given and condition of the said contract, to wit: That the money due for said labor performed and materials furnished was to be paid in *two* instalments: *one half of contract price, to wit:.....dollars* when the work was roughed in, and the *remaining* dollars, together with amount



due for extra labor performed and materials furnished in said building or structure, when the building was finished.

That said contract has been fully performed on the part of said....., that the same was completed, and the said building or structure finished on the.....day of,.....1894, and 30 days have not elapsed since the same was completed and the said building or structure finished.

That the amount of the contract price for said labor performed and materials furnished as aforesaid in said building or structure, is the sum of.....dollars in U. S. gold coin. That the amount of extra labor performed and materials furnished as aforesaid in said building or structure is the sum of.....dollars. That the sum of.....dollars has been paid on said contract price and the sum of.....dollars balance due on contract price, and the sum of.....dollars for extra labor and materials furnished in gold coin of the U. S. is still due and owing thereon to said.....after deducting all just credits and offsets.

Wherefore, said ..... claim the benefit of the law relative to liens of mechanics and others upon real property, to wit: Chapter II, Title IV, Part III, of the Code of Civil Procedure.

State of California, }  
City and County of San Francisco. }

..... being duly sworn deposes and says that he is one of the partners of the firm of ..... claimant in the foregoing claim of lien; that he has read the same and knows the contents thereof, and that the same is true, and that the contents show (among other things), a correct statement of their demand after deducting all just credits and offsets.

Subscribed and sworn to before me  
this ..... day of ..... 189...

[SEAL] ..... Notary Public.

..... & .....  
Doing business under the firm name and  
style of ..... Claimants.  
vs.  
.....

**Material-Man's Lien.**

You are hereby notified that....., a copartnership doing business under the said firm name and style of which.....

and.....are co-partners, furnished *sand and gravel* to ..... , a contractor, engaged in the construction and building of that certain *conduit or tunnel along.....street between .....and.....streets, and also along.....street, between .....and.....streets*, into the bay of San Francisco, in the City and County of San Francisco, in connection with that certain building and lot situated in said city and county and bounded and described as follows: ..... the said *tunnel and conduit being for the purpose of conveying waters from the Bay of San Francisco* to said premises. That the ..... (a corporation) is the owner or reputed owner of said *tunnel or conduit* and of the above described premises.

That said ..... was employed by said ..... (a corporation) to construct and build said *conduit or tunnel*. That during the construction and building of said *conduit or tunnel* aforesaid at the request of ..... , your claimants..... furnished materials, viz., *sand and gravel* to be used and which were used in the construction of said *conduit or tunnel*. That the value of the said *sand and gravel* so delivered aforesaid was and is of the value of \$....., which the said..... agreed to pay. That the following is a statement of the terms, time given, and conditions under which said *sand and gravel* was furnished, to wit:

Payable on demand. That there are no credits or offsets to said demand and the whole thereof is now due and payable. That no part of the sum of .....dollars has been paid, and the whole thereof is now due after deducting all just credits and offsets. Wherefore the said.....claims a lien upon such premises for the materials furnished, amounting to the sum of .....dollars, under the laws of this State.

State of California,  
City and County of San Francisco. }

.....being duly sworn says that he is a member of the firm of ..... claimants above named in the foregoing claim of lien; that he has read the same and knows the contents thereof, and the same is true, and it contains a true statement of his demand after deducting all just credits and offsets.

Subscribed and sworn to before me }

this ..... day of ..... , 189.. }

[SEAL]

.....Notary Public, in and for the City and County of San Francisco, State of California.

....., Plaintiff,  
vs.  
....., Defendant. }

**Laborer's Lien.**

To whom it may concern. The undersigned..... laborer hereby claims a laborer's lien on the several lots of land with the improvements thereon, situated in the City and County of San Francisco, State of California, and bounded and described as follows, to-wit:..... Said lots of land are now and at all times in this statement mentioned, were owned or reputed to be owned by....., who caused said improvements to be erected.

Said claim for lien is filed for labor performed in the months of ....., 189., in *grading, macadamizing, sewerage and guttering* ..... avenue, as laid down on the official map of said city and county, from ..... avenue to ..... street, under a contract made by one ....., with the said owners dated May, ....., 189., and by said ..... assigned over to Messrs. .... and ....., contractors, as aforesaid with said owners. There were .... days work done as aforesaid in the month of ....., 189., a total of .... days at \$.... per day wages, which the said .... and ..... agreed to pay the undersigned, and which they promised to pay monthly as the work went on, that is to say, the first ..... after the first day of each month. There has been paid on said claim \$..... and no more; and there is now due for such labor after deducting all just credits and offsets the sum of \$..... The said contractors were to receive for said work of *grading, macadamizing, sewerage, curbing and guttering* said ..... avenue, per front foot, the whole length being about .... feet, to be paid when the work was done to the satisfaction and acceptance of the superintendent of streets, highways and squares, of said city and county.

That as the undersigned has been informed and believes, the said work on the part of the said contractors was completed under said contract on the ..... day of ..... 18...

[SEAL.]

State of California,  
City and County of San Francisco. }

..... being duly sworn, deposes and says that he is the claimant in the above-entitled statement; that he has read

the above and foregoing statement, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

..... [SEAL]  
 Subscribed and sworn to before me)  
 this ..... day of ..... 189...)  
 [SEAL] ..... Justice of the Peace.

..... }  
*vs.* } **Release of Lien.**  
 .....

Know all men by these presents: That the mechanic's lien filed by.....against....., dated....., 1894, for the sum of.....dollars (\$.....) and recorded in the office of the County Recorder of the City and County of San Francisco, State of California, in Book...of liens, page....., on the.....day of....., 1894, together with the debt thereby secured, is fully paid, satisfied and discharged.

In witness whereof, I have hereunto set my hand and seal, the.....day of.....in the year of our Lord eighteen hundred.....

Signed, sealed and delivered) .....  
 in the presence of } [SEAL.]

State of California, }  
 City and County of San Francisco.}

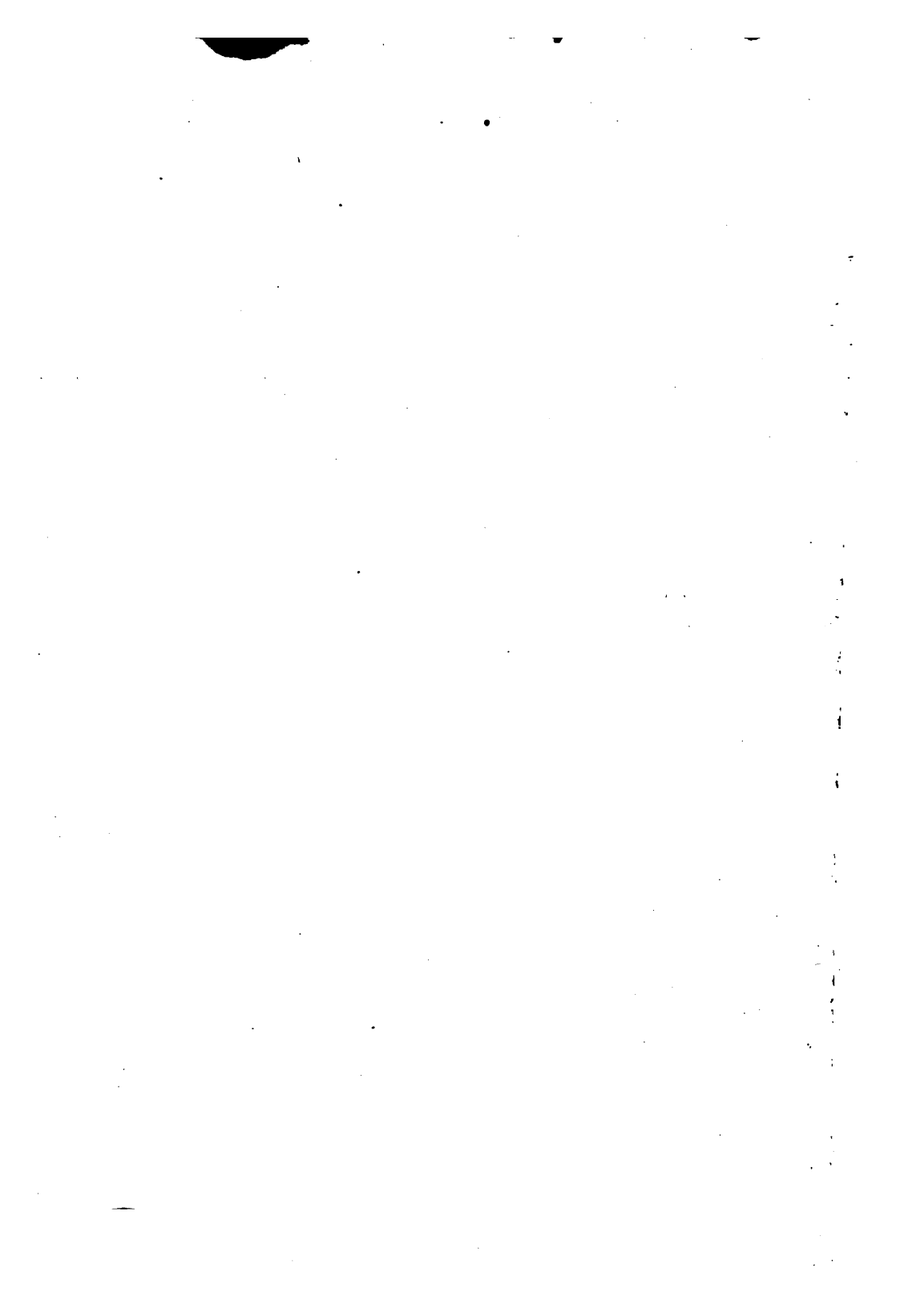
On the .....day of....., eighteen hundred and ninety-four, before me,....., a notary public in and for said City and County, residing therein, duly commissioned and sworn; personally appeared....., known to me to be the person described in, whose name is subscribed to, and who executed the annexed instrument, and he duly acknowledged that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

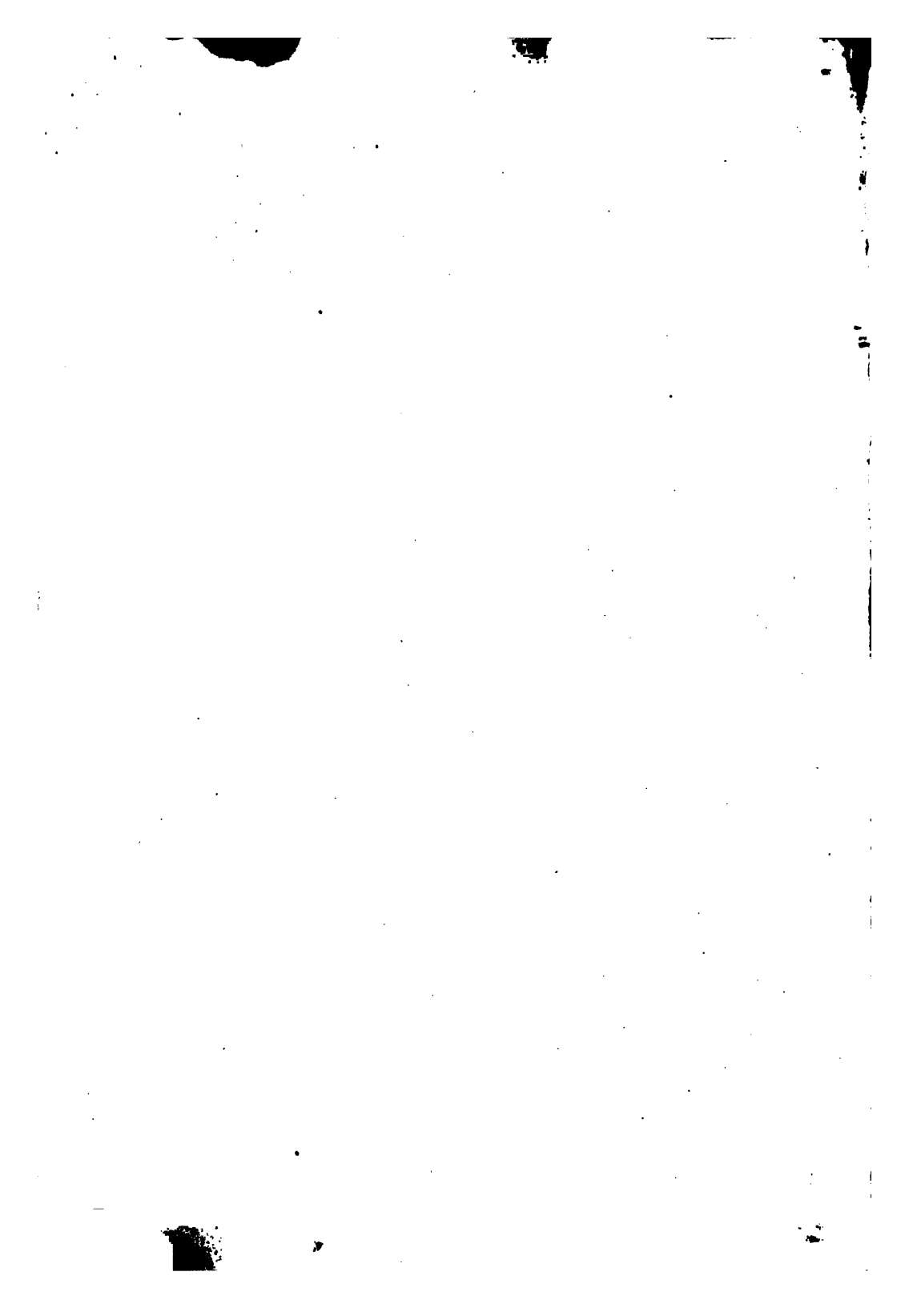
{SEAL.] ..... Notary Public,

In and for the City and County of San Francisco, State of California.











**Robert Crown Law Library  
Stanford University  
Stanford, CA 94305-8612**

DL ARI HYm  
Mechanics' law of Califor  
Stanford Law Library



3 6105 044 269 228